United States Court of Appeals

for the Second Circuit

SUPPLEMENTAL APPENDIX

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75-7069

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P/S

United States Court of Appeals
FOR THE SECOND CIRCUIT

Docket Nos. 75-7069, 75-7208

COMPANIA ESPANOLA DE PETROLEOS, S.A.,
Plaintiff-Appellant-Cross-Appellee,

against

NEREUS SHIPPING, S.A.,
Defendant-Appellee-Cross-Appellan

Docket No. 75-7206

HIDROCARBUROS y DERIVADOS, C.A.,
Plaintiff-Appellee,

against

NEREUS SHIPPING, S.A.,
Defendant-Appellant,

and

COMPANIA ESPANOLA DE PETROLEOS, S.A.,
Defendant-Appellee.

Docket No. 75-7207

In the Matter of the Arbitration

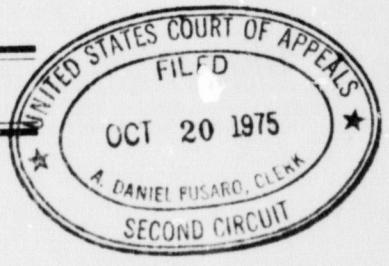
between

HIDROCARBUROS y DERIVADOS, C.A.,
Petitioner-Appellee,

against

NEREUS SHIPPING, S.A.,
Respondent-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT,
FOR THE SOUTHERN DISTRICT OF NEW YORK



SUPPLEMENTAL APPENDIX

(See inside of cover for names and addresses of attorneys.)

7

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Docket Nos. 75-7206, 75-7207

Hidrocarburos y Derivados, C.A.,
Plaintiff-Appellee,

- against -

Nereus Shipping, S.A.,
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In the Matter of the Arbitration

between

Hidrocarburos y Derivados, C.A.,
Petitioner-Appellee,

- against -

Nereus Shipping, S.A.
Respondent-Appellant.

S 1

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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HIDROCARBUROS Y DERIVADOS, C.A.,

Plaintiff,

- against -

75 Civ. 463 (CES)

NEREUS SHIPPING, S.A. and COMPANIA ESPANOLA DE PETROLEOS, C.A.,

PROPOSED ORDER OF CONSOLIDATION

Defendants.

---------- x

On motion of plaintiff to stay the arbitration between the defendants pending the outcome of the arbitration between plaintiff and defendant Nereus Shipping, S.A., affidavits and memoranda having been submitted, hearings having been duly held, due deliberations having been had thereon, and it appearing from all the proceedings herein that the two arbitrations involve common questions of law and fact and that consolidation will prevent any prejudice to either party which would result from the order of those arbitrations and consolidation will reduce cost and delay, it is

ORDERED, that the two said arbitrations are hereby consolidated for all purposes and all claims of the three parties shall be heard in said consolidated arbitration before one panel of arbitrators; and it is further

ORDERED, that the arbitration panel who shall hear all claims shall consist of five members of whom one shall be chosen by plaintiff, one shall be chosen by defendant Nereus Shipping, S. A., one shall be chosen by defendant Compania Espanola de Petroleos, C. A. and those three so chosen shall chose the remaining two arbitrators, and it is further

ORDERED, that a copy of this order be served upon the arbitrators appointed in the arbitration previously pending between plaintiff and defendant Nereus Shipping, S. A., and those appointed in the arbitration previously pending between defendant Nereus Shipping, S. A. and defendant Compania Espanola de Petroleos, C. A.

Dated March , 1975.

District Judge

S 3

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

---------- x

HIDROCARBUROS Y DERIVADOS, C.A.,

Plaintiff,

- against -

75 Civ. 463 (CES)

NEREUS SHIPPING, S.A. and COMPANIA ESPANOLA DE PETROLEOS, C.A.,

PROPOSED ORDER OF CONSOLIDATION

Defendants.

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ORDERED, that the arbitration panel who shall hear all claims shall consist of Professor Andreas F. Lowenfeld, Mr. Lloyd C. Nelson and ; and it is further

ORDERED, that a copy of this order be served upon the arbitrators appointed in the arbitration previously pending between plaintiff and defendant Nereus Shipping, S. A. and those appointed in the arbitration previously pending between defendant Nereus Shipping, S. A. and defendant Compania Espanola de Petroleos, C. A.

Dated March , 1975.

District Judge

S 5

9:30 am
3/19/75

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

HIDROCARBUROS Y DERIVADOS, C.A.,

Plaintiff,

-against-

75 Civ. 463 (CES)

NEREUS SHIPPING, S.A. and
COMPANIA ESPANOLA DE
PETROLEOS, S.A.,

Defendants.

----------x

MEMORANDUM IN SUPPORT OF
PROPOSED ORDER OF CONSOLIDATION.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

HIDROCARBUROS Y DERIVADOS, C.A.

Plaintiff,

- against -

75 Civ. 463 (CES)

NEREUS SHIPPING, S.A. and
COMPANIA ESPANOLA DE
PETROLEOS, S.A.

Defendants.

----------x

MEMORANDUM IN SUPPORT
OF PROPOSED ORDER OF
CONSOLIDATION

STATEMENT

The issues herein arise out of a certain charter party entered into between the plaintiff in this action, Hidrocarburos Y Derivados, C.A. (hereinafter HIDECA) and one of the defendants herein, Nereus Shipping, S.A. (hereinafter NEREUS). This charter party was for a period of three years and basically involved the carriage of petroleum products by Hideca in various ships owned, managed or

otherwise controlled by Nereus. The charter party contained a clause calling for arbitration in the event of a dispute between the parties.

During the period of the charter party Hideca began selling certain petroleum products to the other named defendant herein, Compania Espanola De Petroleos, C.A. (hereinafter CEPSA). Apparently at the instigation of Nereus, Cepsa guaranteed the performance of Hideca under the charter party.

In June of 1973, a dispute arose between Hideca and Nereus over the withdrawal of a certain vessel nominated by Nereus and accepted by Hideca, and subsequently over the alleged late payment of charter hire by Hideca. Nereus cancelled the charter party and Hideca called for arbitration under its terms. Hideca and Nereus each appointed an arbitrator as called for in the arbitration clause. However, these two appointed arbitrators could not agree on a third neutral arbitrator and to date the arbitration has not proceeded further.

During this period, Nereus sought to compel Cepsa to arbitrate under the terms of the arbitration clause of the charter party between Hideca and Nereus because of Cepsa's guaranty. Cepsa declined to arbitrate and refused to appoint an arbitrator. Under the provision of the arbitration clause Nereus appointed its own arbitrator and a second arbitrator when Cepsa refused to appoint one. These two appointed arbitrators appointed a third. Plaintiff herein, Hideca

has brought a motion to stay the arbitration of Cepsa and Nereus, pending the outcome of arbitration between Hideca and Nereus, on several grounds.

POINT I

THIS COURT HAS FULL POWER IN ITS DISCRETION TO ORDER CONSOLIDATION OF ARBITRATION PROCEEDINGS WHERE COMMON QUESTIONS OF LAW OR FACT EXIST

The primary issue at this time is whether the arbitration proceedings presently pending between Hideca and Nereus and between Cepsa and Nereus may be consolidated and permitted to proceed with all three parties represented before a single arbitration panel.

By virtue of Rule 42 (a) of the Federal Rules of Civil Procedure (hereinafter FRCP), such consolidation is allowed and is in fact encouraged.

Rule 42 (a) states:

> "...when actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." (emphasis added)

This rule confers on the District Courts broad powers, whether at the request of a party or on its own initiative, to consolidate causes where such consolidation may facilitate the administration of

justice. This point was recognized in Ellerman Lines Limited v. Atlantic & Gulf Stevedores, Inc. (C A Pa. 1964) 339 F 2d 673, cert. den. 382 U.S. 812, 86 S. Ct. 23, 15 L. Ed. 2d 60.

That Rule 42 (a) applies to arbitration proceedings is further emphasized in Rule 81 (a) (3) FRCP.

Rule 81 (a) (3) states:

> "In proceedings under Title 9, U.S.C., relating to arbitration ..., these rules apply only to the extent that matters of procedure are not provided for in those statutes....".

The Federal Arbitration Act, Title 9, U.S.C. is silent on the issue of consolidation; therefore the FRCP and in particular Rule 81 (a) (3) and 42 (a) apply.

The application of the FRCP to arbitration was recognized in the case of Robinson v. Warner (DC RI, 1974) 370 Fed. Supp. 328 where consolidation was allowed.

Nor is this an isolated incident. Consolidation has been allowed in both Federal and State Courts in recent years.

In New York State Courts, consolidation of arbitration has been allowed in Vigo Corporation (Marship Corp. of Monrovia), 26 N Y 2d 157 (1970) and in the Matter of Symphony Fabrics, 12 N Y 2d 409 (1963).

Federal Courts in New York have also permitted consolidation of arbitrations. See Lavino Shipping Company v. Santa Cecelia Company S.A. and Achille Lauro Armatore (SD NY 1972) 1972 AMC 2454 (not officially reported) and Matter of Arbitration between Chilean Nitrate and Iodine Sales, etc. and Intermarine Corp., et al. (SD NY 1971) 1972 AMC 2460 (not officially reported).

Even in Showa Shipping Co. Ltd. v. A/B Bellis and Compania Naviera Asiatic S.A. and Seatrain Lines, Inc. Guarantor. (SD NY 1972) 1972 AMC 2458 (not offically reported), the discretionary power of the Court to order consolidated arbitration was recognized. Consolidation in that case was denied, not because the Court could not order it, but because of prejudice which would have resulted to one of the parties therein had consolidation been allowed.

It is recognized that there must be a common question of law and fact and prejudice must not result to one of the parties. However, it is argued that the issue presently before the Court is one of common question of law and fact and consolidation will not prejudice any of the parties.

On the contrary it is argued that if consolidation is not allowed, prejudice will result to the parties, especially Hideca.

The basic issue in dispute is the allegedly late charter hire payments by Hideca which Nereus considered a breach of con-

tract and subsequently caused them to cancel the contract. Cepsa's only real connection is that they may be liable under their Guaranty Bond to Nereus if the dispute between Nereus and Hideca is resolved in favor of Nereus. The question common to both arbitrators is the conduct of Nereus and Hideca under the charter party.

Hideca stands to be prejudiced if consolidation is not allowed particularly since there is the possibility of inconsistent results in the arbitration awards which could conceivably exonerate Hideca of any wrong doing but leave Hideca liable to Cepsa should the arbitrators of the Cepsa/Nereus arbitration find for Nereus.

There is precedent to allow consolidation and in those cases where there is a common question of law or fact existing, consolidation is favored as a matter of convenience and economy of administration.

The facts of this case clearly call for the application of the Court's discretionary powers. As the Court in the Lavino case, supra, said: "To permit the arbitration to be conducted separately would only have the effect of delaying the speedy determination of the question and of frustrating the very purpose of the arbitration clauses contained in the charter party." The parties can best resolve their dispute by presenting it to a single consolidated panel.

POINT II

IT IS WITHIN THE DISCRETION OF THE COURT TO ORDER THE TYPE OF ARBITRATION PANEL TO BE CONVENED.

Rule 42 (a) FRCP, as stated in Point I, applies to arbitration proceedings and that rule allows the Court to "... make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."

Plaintiff submits that the Court has the power to order the type of arbitration panel to be convened.

In the Chilean Nitrate case, supra, the Court, in providing for consolidation, also provided for the making of all other requisite provisions which were needed.

One method of appointment is seen in the Memoranda decision of Justice Gellinoff of the New York State Supreme Court, in the case of Showa Shipping Co., Inc. v. Skibs A/S Agnes, etc. (submitted herewith as Exhibit A). In that case the Court allowed each party to appoint one arbitrator and the three appointed arbitrators selected two neutral arbitrators.

Alternatively, as in the Lavino case, supra, one of the parties waived appointment of an arbitrator upon consolidation,

and the remaining two parties each appointed an arbitrator, the two of whom selected a third neutral arbitrator.

Again, alternatively the Court could have Hideca and Cepsa appoint just one arbitrator and Nereus appoint one; those two to appoint a third. Then the consolidated arbitration will be heard before the three arbitrators.

POINT III

THE CONSOLIDATION OF THE ARBITRATIONS BY THE COURT WOULD NOT CAUSE UNNECESSARY COSTS OR DELAY.

With the exception of Cepsa the parties have each nominated at least one arbitrator. Should the arbitrations be consolidated, Hideca need only confirm the presently appointed arbitrator, Nereus need only select one of the two appointed by it and Cepsa can either waive its appointment or be directed to appoint an arbitrator.

With regard to the possibility of an appeal from an order of consolidation, an order granting consolidation is a nonappealable interlocutory order and is not within that class of interlocutory orders made appealable by 28 U.S.C. §1292. Noli v. Chrysler Corp., 324 F. 2d 373, 374 (3rd Cir. 1963); 9 Moore's Federal Practice Par. 110.13 [3] (1973). Nor is there an appeal by virtue of 28 U.S.C. §1292 (a) (3) which in general provides that an order dismissing a claim on the merits is appealable but a procedural order such as consolidation is not appealable by virtue

of §1292 (a) (3). 9 Moore's Federal Practice Par.110.19 [3], Emerick v. Lambert, 187 F. 2d 786 (th Cir. 1951).

Nereus' threat to take an appeal is therefore without meaning.

CONCLUSION

THIS COURT SHOULD ORDER THE CONSOLIDATION OF THE ARBITRATIONS BETWEEN HIDROCARBUROS Y DERIVADOS, C.A. AND NEREUS SHIPPING, S.A. AND BETWEEN NEREUS SHIPPING, S.A. AND COMPANIA ESPANOLA DE PETROLEOS, C.A.

Respectfully submitted,

DONOVAN, DONOVAN, MALOOF & WALSH

and

BAKER & MCKENZIE
Co-counsel for Plaintiff

DAVID L. MALOOF, ESQ.
Of Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

HIDROCARBUROS Y DERIVADOS, C.A.

Plaintiff,

- against -

NEREUS SHIPPING, S.A. and
COMPANIA ESPANOLA DE PETROLEOS, S.A.,

Defendants.

75 Civ. 463 (C.E.S.)

Proposed Order

- X

1. Plaintiff ("Hideca") moved on February 7, 1975 for a temporary restraining order to be followed by a preliminary injunction restraining an arbitration between defendants Nereus Shipping, S.A. ("Nereus") and Compania Espanola De Petroleos S.A. ("Cepsa") under Addendum No. 2 of Contract of Affreightment dated January 27, 1971 ("Charter").

2. By the decision of this Court dated December 18, 1974 entitled "Compania Espanola De Petroleos, S.A. v. Nereus Shipping, S.A.", 74 Civ. 5102, it was held that under Addendum No. 2 of the Charter "Cepsa has consented to arbitrate disputes once it has been notified by Nereus of any default by Hideca".

3. The arbitration panel in the Nereus - Cepsa arbitration has been properly appointed in accordance with the provisions of the Arbitration Agreement between those parties and consists of Mr. Lloyd C. Nelson, Mr. Manfred Arnold and Mr. Jack Berg.

4. The separate Arbitration Agreements between Nereus and Cepsa, and between Nereus and Hideca respectively provide for arbitration before a panel of three (3) arbitrators.

With respect to the disputes between Nereus and Cepsa under the Charter which arose prior to July 24, 1974, (the date on which Nereus invoked the provisions of Addendum No. 2 between Nereus and Cepsa), each party has nominated an arbitrator. Nereus has appointed Mr. Lloyd C. Nelson and Hideca has appointed Professor Andreas F. Lowenfeld, and a petition for the appointment of a third arbitrator in the Nereus - Hideca arbitration is pending before this Court in 75 Civ. 464.

5. There is a serious question of law whether this Court can issue an injunction in an admiralty action to restrain the Nereus - Cepsa arbitration at the request of Hideca, who is not a party to said arbitration. In Schoenamsgruber v. Hamburg American Line, 294 U.S. 454, 79 L.Ed. 989 (1935), the Supreme Court held, in part, as follows:

> "While courts of admiralty have capacity to apply equitable principles in order the better to attain justice, they do not have general equitable jurisdiction and, except in limitation of liability proceedings, they do not issue injunctions."

In Moran Towing & Transportation Co. v. United States, 290 F. 2d 660 (2d Cir. 1961), the Court held, in part, as follows:

> "The power of admiralty to issue injunctions appears to be circumscribed; some authorities deny any power except in limitation proceedings ***."

Nereus, which is the party to the two separate Arbitration Agreements, has opposed plaintiff's motion for an injunction and based on the foregoing Plaintiff's motion for a restraining order and injunction is denied.

6. During argument on Plaintiff's motion it was suggested by Hideca and by Cepsa that the Court might order a consolidation of the Nereus - Cepsa arbitration with the Nereus - Hideca arbitration before a single arbitration panel consisting

of five (5) arbitrators. This suggestion was opposed by Nereus and each separate Arbitration Agreement between Nereus and Cepsa and between Nereus and Hideca provides for arbitration before a panel of three (3) arbitrators. The role of the Courts under the Federal Arbitration Act, 9 USC §1 et sec. is to enforce the Arbitration Agreement made by the parties and not to make a new agreement for them. See, Greenwich Marine, Inc. vs. S.S. Alexandra, supra; Instituto Cubano De Establizacion Del Azucar vs. T/V Golden West, 1956 A. M. C. 704, 128 F. Supp. 754 (S.D.N.Y., 1955), aff'd, 1957 A. M. C. 1481, 246 F. (2d) 802 (2 Cir., 1957), cert. denied, 355 U.S. 884, 1958 A. M. C. 247 (1957); Industria E. Connereio De Minerios vs. Nova Genuesis Societa, 1959 A. M. C. 1552, 172 F. Supp. 569, aff'd, 1963 A. M. C. 109, 310 F. (2d) 811 (4 Cir., 1962); A/S Ganger Rolf vs. Zeeland Transportation, Ltd., 1961 A. M. C. 988, 191 F. Supp. 359 (S.D.N.Y., 1961); also, Prima Paint Corp. vs. Flood & Conklin Mfg. Co., 380 U.S. 395, 405 (1967); Matter of Rederi (Dow Chemical Company and Ano.), 1969 A. M. C. 485, 31 A. D. (2d) 372 (decided March 11, 1969).

7. In those cases where a court has ordered consolidation of two arbitrations, the party seeking consolidation has been the one who was a party to each agreement to arbitrate and therefore to each arbitration. Moreover, the party seeking consolidation has agreed to waive the appointment of an arbitrator so that the other two parties have each selected one arbitrator and those two have appointed the third. See Lavino Shipping Co. v. Santa Cecilia Co. S.A. and Achille Lauro-Armatore, 1972 AMC 2454 (SDNY 1972) where the Court held, in part, as follows.

"The petition (i.e. of Lavino) to compel a consolidated arbitration is granted. Cecilia has appointed Mr. Lloyd C. Nelson as its arbitrator, and Lauro, Mr. Peter Siebel, Jr. Lavino has expressed its willingness to waive its right to appoint an arbitrator. I hereby order that the consolidated arbitration be submitted to Messrs. Nelson, Siebel and a third arbitrator to be appointed by them."

8. Nereus, which is the only party bound by the two separate Arbitration Agreements, has opposed consolidation. The arbitration panel in the Nereus - Cepsa arbitration is completed. There is no authority for this Court to order removal of any of the arbitrators, who were properly appointed pursuant to the terms of the Arbitration Agreement between Nereus and Cepsa, or to change the agreements of the parties and order a consolidated arbitration before five (5) arbitrators or before a different panel.

9. With respect to the petition for the appointment of a third arbitrator in the Nereus - Hideca arbitration, 75 Civ. 464, the Court hereby appoints Mr. Jack Berg to act as the third arbitrator.

10. Addendum No. 2 provided "that should Hideca default in the payment or performance of its obligations" under the Charter, Nereus could invoke the terms of Addendum No. 2 and by notice call upon Cepsa to perform the balance of the Charter. However, Addendum No. 2 also provided that Cepsa's liability would be for the further performance of the Charter and it was not a guaranty of payment of sums due from Hideca to Nereus. To the extent that there are common questions concerning the default of Hideca under the Charter, the hearings of the Nereus - Cepsa arbitration before the panel of Messrs. Berg, Arnold and Nelson and the hearings of the Nereus - Hideca arbitration before the panel of Messrs. Berg, Lowenfeld and Nelson, are to

be conducted concurrently. However, the deliberations of the separate arbitration panels shall be separate. It is recognized that a situation can arise where the Nereus - Cepsa arbitration could decide that Addendum No. 2 was properly invoked by Nereus because Hideca was in default in the payment/or performance of the Charter, even if the Nereus - Hideca arbitration were to deny Nereus an affirmative award based on the claims and counterclaims in such arbitration.

.....

U.S.D.J.

Dated March , 1975

S 23

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February 26, 1975

Honorable Charles E. Stewart
United States District Judge
Southern District of New York
Foley Square
New York, New York

Re: HIDECA
v.
NEREUS and CEPSA
75 Civ. 464

Dear Judge Stewart:

Further to the conference in your chambers on February 21, 1975, I am enclosing herewith a copy of the Memorandum Decision of Judge Gellinoff of the New York Supreme Court in the matter of Showa Shipping Co., Inc. v. Skibs A/S Agnes dated January, 8, 1975. I also enclose a copy of the petition in the case. As you can see, Judge Gellinoff ordered that under similar circumstances a five member arbitration panel would be appointed. I have reviewed the briefs of counsel in the Showa case and this alternative was apparrently neither briefed nor suggested by counsel.

Although there is no formal motion before you to consolidate the arbitration proceedings, such an alternative may well be a practical solution to the pending litigation which has little bearing on the merits of the ultimate liability of the parties.

In recent years, the various Judges of this court have ordered consolidations where appropriate. I enclose herewith a brief memorandum setting fourth those cases.

As you know, the hearing before you on February 21, only considered the motions of Hideca for appointment of a third arbitrator (75 Civ. 263) and to stay the pending arbitration between Nereus and CEPSA (75 Civ. 264). Although Burke and Parsons served opposing papers on February 19, 1975, on Baker & McKenzie, and on Donovan, Donovan, Maloof & Walsh as co-counsel for Hideca, we were not served until Monday, February 24. We, therefore, intend to reply to the papers of Burke & Parsons in time for the hearing before you on March 5, 1975.

With all due respect to your Honor, we consider your opinion in the CEPSA v. Nereus case (74 Civ. 5102) to be erroneous and we have taken an appeal therefrom. Burke & Parsons moved to dismiss the appeal and the Court of Appeals ordered that it be referred to the panel that will hear the appeal in April.

However, at the conference of March 5, perhaps all procedural issues could be resolved.

Sincerely yours,

Patrick V. Martin

PVM/em
Enc.
cc. Baker & McKenzie
(Attn.: Ms. Janna Bellwin)

Burke & Parsons
(Attn.: Thomas A. Dillon, Jr., Esq.)

Donovan, Donovan, Maloof & Walsh
(Attn.: David Maloof, Esq.)

MEMORANDUM ON
CONSOLIDATION OF ARBITRATION PROCEEDINGS

Re: Hideca/Nereus COA
January 27, 1971
CEPSA Guaranty
June 24, 1971

In recent years the Federal and State courts have ordered the consolidation of arbitration proceedings.

The leading case is Vigo Corporation (Marship Corp. of Monrovia) 26 N.Y. 2d 157 (1970). In that case, the Court of Appeals held that where there are common questions of law of fact consolidation will be ordered in disputes between a Vessel Owner, a Time Charterer and a Voyage Charterer, involving two separate Charter Parties. See also Matter of Symphony Fabrics, 12 N.Y. 2d 409 (1963), where the Court of Appeals ordered a consolidation of disputes before the American Arbitration Association.

A similar result has been reached in the Federal court; Robinson v. Warner, 370 F. Supp 828 (D.C.R.I. 1974); Chilean Nitrate & Iodine Sales v. Inter Marine Corp., 1972 AMC 2460 (S.D.N.Y. 1972) (not officially reported).

However, where prejudice may result to one of the parties or there were not common questions of fact and law consolidation was not ordered Showa Shipping Co., Ltd. v. A/S Bellis and Compania Naviera Asiatic S.A., et.al. 1972 AMC 2458 (S.D.N.Y. 1972) (not officially reported).

Since §81(A) (3) of the FRCP makes the Federal Rules applicable to Title 9 proceedings, the courts will apply similar considerations and standards as are applicable to any motion to consolidate proceedings under Rule 42 of the FRCP. See also DONKA ON COMMERCIAL ARBITRATION, 1968, §27.02 p. 272.

S 27

SUPREME COURT OF THE STATE OF NEW YORK — SPECIAL TRIAL PART 6, NEW YORK COUNTY

at the Courthouse thereof, 60 Centre Street, New York, New York, 10007.

Present: Hon. ABRAHAM J. GELLINOFF Justice.

In the matter of the [illegible] of

[illegible] Shipping Co. Inc.

— against —

[illegible] Fls/ Flames, etc.

SUBMITTED

The following papers numbered 1 to 11 read on this motion,

	PAPERS NUMBERED
Notice of Motion — Order to Show Cause — and Affidavits Annexed	1-5
Answering Affidavit	6-11
Replying Affidavit	
Affidavit	
Affidavit	
Pleadings — Exhibit	
Stipulation — Referee's Report — Minutes	
Filed Papers	

No. 26 on Calendar of NOV 19 1964

OFFICE COPY

Kirlin, Campbell & Keating

NEW YORK, N. Y. 10005

Upon the foregoing papers the motion to consolidate the arbitration proceedings - one between the owner and prime charterer of a vessel, and the other between the prime charterer and sub-charterer, in what is essentially a dispute between the owner and sub-charterer - is granted [See, Matter of Vice Steamship Corp. (Hercules Corp. of Venezia), 20 A.D. 2d 197 (1st Dept.)]. The difficulties in appointing a panel may be easily resolved. Petitioner, the prime charterer, may withdraw its appointed arbitrator, and permit the arbitrators of the two real interested parties to select a neutral. In the alternative, each of the three parties may select an arbitrator, and the three shall select the neutral arbitrators, with a vote of three of the five necessary for an award. [illegible] the judgment, specifying therein the procedure for executing the pro[illegible]

Dated 11/19/64

J. S. C.

Briefs: Plaintiff's ..... Defendant's ..... Petitioner's ..... Respondent's ..... Relator's .....

Briefs .....

County Clerk's No. 10262 19 64

Due and timely service of ONE copies
of the within SUPPLEMENTAL APP and it is hereby
admitted this 20TH day of OCTOBER 1975

Burke + Parsons by Stephen P. Kyne
Attorneys for [illegible] SHIPPING

ATTORNEYS FOR COMPANIA ESPANOLA DE
PETROLEOS, S.A.

Judah C. Pizziraus